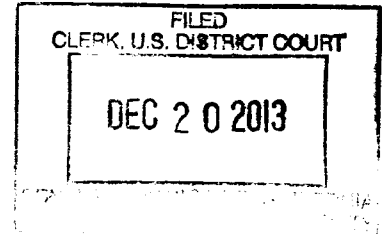


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 DISNEY ENTERPRISES, INC.

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

DISNEY ENTERPRISES, INC., a  
 Delaware corporation,

Plaintiff,

v.

PHASE 4 FILMS, INC., a Canadian  
 corporation, PHASE 4 FILMS (USA)  
 LLC, a Delaware limited liability  
 company, and Does 1-10,

Defendants.

Case No. **CV13-9401 RSWL-MAN**  
**COMPLAINT FOR TRADEMARK  
 INFRINGEMENT AND UNFAIR  
 COMPETITION**

**JURY TRIAL DEMANDED**

Plaintiff Disney Enterprises, Inc. ("DEI") for its Complaint against  
 Defendants Phase 4 Films, Inc. and Phase 4 Films (USA) LLC (together,  
 "Phase 4"), and Does 1-10 (with Phase 4, "Defendants") alleges as follows:

## 1 **I. INTRODUCTION**

2 1. One of this year's most acclaimed and successful motion pictures is  
 3 *FROZEN*, a feature-length animated picture released by DEI's affiliate, Walt Disney  
 4 Pictures, shortly before Thanksgiving in November 2013. *FROZEN* is slated for  
 5 release in DVD and other home entertainment formats in early 2014. Its prospects  
 6 for continued success in that market are also bright, with millions of copies of the  
 7 picture likely to be purchased by consumers in brick and mortar stores such as Wal-  
 8 Mart and Best Buy or at online retailers such as iTunes and Amazon.com. The  
 9 theatrical release of *FROZEN* was carefully planned and executed over an extended  
 10 period of time: Marketing for the picture showing its key artwork and title logo  
 11 debuted in movie theatres and other media nationwide in June 2013. A coordinated,  
 12 wide-ranging public merchandising campaign using the same titles, logos, and  
 13 designs began in September 2013.

14 2. On November 1, 2013, less than three weeks before the Hollywood  
 15 premiere of *FROZEN* on November 19, Phase 4 theatrically released an animated  
 16 picture entitled *The Legend of Sarila*, which generated minimal box office revenues  
 17 and received no significant critical attention. Accordingly, that picture's prospects  
 18 for achieving success in the home entertainment market were uncertain at best.  
 19 Knowing of Disney's imminent release of *FROZEN*, however, Phase 4 suddenly  
 20 changed the title of *The Legend of Sarila* ("Sarila" being the name of a lush,  
 21 abundant, and non-frigid mythical land) to *FROZEN LAND*, a title deceptively and  
 22 confusingly similar to *FROZEN*. Phase 4 also redesigned the artwork, packaging,  
 23 logo, and other promotional materials for its newly (and intentionally misleadingly)  
 24 retitled film to mimic those used by DEI for *FROZEN* and related merchandise. In  
 25 fact, Phase 4's redesigned logo, as depicted below on its DVD cover, is nearly  
 26 identical to *FROZEN*'s logo, shown below on a toy's packaging:



The near identity to *FROZEN*'s logo rules out coincidence or accident.

3. Phase 4's conduct is unlawful. It is proscribed by, among other statutes, the federal Lanham Act. In this action, DEI seeks, among other things, preliminary and permanent injunctive relief and damages to remedy Defendants' actions.

## **II. JURISDICTION AND VENUE**

4. This is a complaint for Trademark Infringement and False Advertising arising under Section 43(a) of the Lanham Act, 15 U.S.C. Sec. 1125(a), 101 et seq.

5. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. Sec. 1338(a) and 15 U.S.C. Sec. 1121.

6. This Court has personal jurisdiction over Defendants because, among other things, Defendants conduct and solicit business in this jurisdiction and, on information and belief, distribute motion pictures and associated consumer products that are the subject matter of this Complaint in this jurisdiction.

7. Venue is proper in this district under 28 U.S.C. Sec. 1391(b) and (c) because a substantial part of the events giving rise to the claims occurred in this district.

## **III. THE PARTIES**

8. DEI is, and at all times relevant hereto has been, a corporation organized and existing under the laws of Delaware, with a principal place of

1 business at 500 South Buena Vista Street, Burbank, California 91521. Among other  
 2 things, DEI owns trademark rights in feature-length motion pictures produced and  
 3 distributed by affiliated companies of The Walt Disney Company and/or their  
 4 predecessors in interest. A significant aspect of DEI's business is the licensing of  
 5 the characters and other original elements featured in the motion pictures of its  
 6 Disney affiliates.

7 9. DEI is informed and believes, and on that basis alleges, that Defendant  
 8 Phase 4 Films, Inc. is, and at all times relevant hereto has been, a corporation  
 9 organized and existing under the laws of Canada, with a principal place of business  
 10 in Canada, but doing business in the United States and in the State of California,  
 11 including in this judicial district and elsewhere.

12 10. DEI is informed and believes, and on that basis alleges, that Defendant  
 13 Phase 4 Films (USA) LLC is a Delaware limited liability company that operates as  
 14 Phase 4 Films, Inc.'s business entity for the distribution of motion pictures in the  
 15 United States and in the State of California, including in this judicial district and  
 16 elsewhere.

17 11. DEI is currently unaware of the true names and capacities, whether  
 18 individual, corporate, or otherwise, of Does 1 through 10, and therefore sues these  
 19 defendants by fictitious names. Each Doe defendant in some way participated in,  
 20 contributed to, or was responsible for the matters alleged in this Complaint. When  
 21 DEI learns the true name and capacity of a Doe defendant, DEI will amend this  
 22 pleading to allege that defendant's true name and capacity, together with such other  
 23 allegations as may be appropriate.

#### 24 **IV. FACTUAL BACKGROUND**

##### 25 **A. The Motion Picture *FROZEN***

26 12. On November 19, 2013, the Disney animated motion picture *FROZEN*  
 27 premiered in Hollywood. The title is a trademark of DEI. *FROZEN* tells the story  
 28 of Anna, a young princess whose sister, the Snow Queen, freezes her kingdom;



1 Anna then journeys with her brave (but funny) companions to save her kingdom  
2 from an eternal winter. Since its debut, *FROZEN* has been exhibited in more than  
3 3,700 theatres across the United States and is reported to have generated cumulative  
4 box office receipts of more than \$170 million.

5 **B. The Distinctive *FROZEN* Trademarks**

6 13. As part of the development of *FROZEN*, a distinctive logo for the  
7 “Frozen” trademark was created to promote the picture (the “*FROZEN* Trademark  
8 Logo”). The *FROZEN* trademark and the *FROZEN* Trademark Logo are as follows:



15 As used in a promotional poster for *FROZEN*, it appears as follows:



23 14. As is apparent, the *FROZEN* Trademark Logo is highly distinctive,  
24 including capital letters with jagged, uneven edges, dramatic flourishes on the  
25 letters, and an elongated R and Z that cradle the most prominent element—a  
26 stylized O that curves into itself and does not close entirely.

1           15. The *FROZEN* trademark and the *FROZEN* Trademark Logo have been  
 2 used and featured prominently on all marketing materials for the picture. They are  
 3 featured on an internet website promoting the picture  
 4 (<http://movies.disney.com/frozen>), as well as on all media marketing or promoting  
 5 the picture. They appear in the picture itself, as well as at every theatre where the  
 6 picture is exhibited or advertised, and on television, internet, and print advertising.

7           16. *FROZEN* was the subject of trailers, the first of which was released in  
 8 theatres in June 2013 to run at the beginning of the Disney/Pixar box-office hit,  
 9 *Monsters University* and, like all of its other promotional material, used the  
 10 distinctive trademark and the *FROZEN* Trademark Logo. These trailers were shown  
 11 in theatres, on television, and on the internet, including through, *inter alia*, iTunes,  
 12 YouTube and Facebook. DEI is informed and believes, and on that basis alleges,  
 13 that these trailers have been viewed by millions of people since the first trailer was  
 14 released.

### 15           C. The Distinctive *FROZEN* BLUE OVAL

16           17. The release of *FROZEN* was coordinated with a licensing program  
 17 pursuant to which the design, manufacture, promotion, distribution, and sale of an  
 18 array of merchandise based on the characters, themes, and artwork of *FROZEN* were  
 19 licensed. DEI and its affiliates and licensees expended substantial resources in  
 20 developing this program which includes books, software, apparel, toys, promotional  
 21 merchandise, and a range of other consumer products.

22           18. A key component of the licensing program was the development of the  
 23 *FROZEN* trademark in conjunction with distinctive trade dress to distinguish  
 24 *FROZEN* and to assist consumers in associating licensed merchandise with the  
 25 Disney motion picture. That trade dress was developed over a substantial period of  
 26 time—well in advance of the theatrical release—and distributed in the form of style  
 27 guides to licensees so that the licensees could design, manufacture, and promote  
 28 associated merchandise coordinated with the theatrical release of *FROZEN*. The

1 first style guide, containing the *FROZEN* Trademark Logo and the *FROZEN* Blue  
 2 Oval referenced below, was made available to thousands of licensees as of January  
 3 2013. Licensed *FROZEN* merchandise was available to the public in or around  
 4 September 2013.

5 19. As part of the *FROZEN* licensing program, the *FROZEN* trademark and  
 6 *FROZEN* Trademark Logo appear on licensed *FROZEN*-associated merchandise in  
 7 a distinctive context: They are placed in white on top of a royal blue oval with a  
 8 pattern of flourishes and a floral design surrounding the perimeter of the oval in a  
 9 lighter shade of blue (the “*FROZEN* Blue Oval”). The flourishes and floral design  
 10 is a form of rosemaling, a decorative folk art believed to have originated in Norway  
 11 that Disney used to tie the trademark to the story of *FROZEN*, which takes place in a  
 12 mythical kingdom surrounded by mountains and fjords inspired, in part, by Norway.  
 13 The *FROZEN* Blue Oval is as follows:



21 As used on licensed *FROZEN*-associated merchandise it appears as follows:  
 22  
 23  
 24  
 25  
 26  
 27  
 28



**D. Phase 4 Intentionally Changed the Name and the Logo of Its Movie**

20. The animated picture *The Legend of Sarila* was produced in Canada by CarpeDiem Film & TV and 10th Ave Productions. As described by its original Canadian producers, *The Legend of Sarila* tells “the story of a voyage of initiation in which three young Inuit go in search of Sarila, a promised land, hoping to save their clan from famine.” *The Legend of Sarila* had a theatrical release outside of the United States in the spring of 2013, using the following title logo:



21. DEI is informed and believes, and on that basis alleges, that Phase 4 acquired the rights to distribute *The Legend of Sarila* in the United States in or around June 2013 and that Phase 4 released the film theatrically in the United States in or around November 1, 2013 as *The Legend of Sarila*.

22. The picture *The Legend of Sarila* was then released and marketed in home entertainment formats in the United States on or about November 5, 2013, but not under its original title. Rather, DEI is informed and believes, and on that basis



1 alleges, that Phase 4 renamed the film *FROZEN LAND* prior to its November release  
 2 in commerce in home entertainment formats. DEI is further informed and believes,  
 3 and on that basis alleges, that Phase 4 did so to profit from the November 2013  
 4 theatrical release of Disney's *FROZEN* and the associated marketing efforts in  
 5 commerce that DEI and its affiliates invested in *FROZEN* prior to and after that  
 6 theatrical release. Through the advertising and promotion of *FROZEN*, including  
 7 through trailers and in other media, the *FROZEN* trademark, the *FROZEN*  
 8 Trademark Logo, and the *FROZEN* Blue Oval acquired distinctiveness with people  
 9 throughout the country prior to November 5, 2013.

10 23. Phase 4 created packaging and a logo for the new title *FROZEN LAND*  
 11 as follows:



18 24. As is apparent from the face of the *FROZEN LAND* logo, despite the  
 19 infinite options available to it, Phase 4 intended its logo to replicate the *FROZEN*  
 20 Trademark Logo of Disney's *FROZEN*. For example, the *FROZEN LAND* logo also  
 21 includes jagged, uneven edges on the lettering, dramatic flourishes on the letters,  
 22 and an elongated R and Z that cradle a stylized O that curves into itself and does not  
 23 close entirely. In addition, the word "frozen" is significantly larger than the word  
 24 "land." The two logos are nearly identical:



25. In addition, Phase 4 intended its logo to be a near carbon-copy of the *FROZEN* Blue Oval. For example, the *FROZEN LAND* logo places the “*FROZEN LAND*” title in white on a royal blue oval that, in addition to the title, includes decorative flourishes and floral designs surrounding the perimeter in a lighter shade of blue—flourishes and floral designs that are strikingly similar to the rosemailing used in the *FROZEN* Blue Oval. The following depicts the near identical form of the two ovals:



26. DEI did not authorize Defendants’ use of the title *FROZEN LAND*, the *FROZEN* Trademark Logo, or the *FROZEN* Blue Oval.

27. DEI is informed and believes, and on that basis alleges, that consumers have been and will continue to be confused as to the origin of Phase 4’s film *FROZEN LAND* and that, as a result of such confusion, DEI has suffered and will suffer irreparable harm as a result.

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**FIRST CAUSE OF ACTION**

**TRADEMARK INFRINGEMENT OF THE *FROZEN* TRADEMARK, THE**

***FROZEN* TRADEMARK LOGO, AND THE *FROZEN* BLUE OVAL**

**(Lanham Act § 1125(a)(1)(A))**

28. DEI incorporates paragraphs 1-27 set forth above as if set forth in full herein.

29. The *FROZEN* trademark is distinctive and, by virtue of the substantial investment and widespread promotion and distribution of the animated motion picture bearing the title, has acquired distinctiveness as an exclusive indicator of origin for the motion picture *FROZEN* and associated licensed merchandise.

30. Defendants use a copy, variation, simulation, or colorable imitation of the *FROZEN* trademark in connection with their own production, marketing, advertising, promotion, distribution, and sale of *FROZEN LAND*. Defendants' use of this title is explicitly misleading and not authorized by DEI, and its use is expressly misleading and likely to cause confusion, mistake, or deception and constitutes trademark infringement in violation of Section 43 of the Lanham Act. 15 U.S.C. §1125(a)(1)(A).

31. The *FROZEN* Trademark Logo is distinctive and, by virtue of the substantial investment and widespread promotion and distribution of the animated motion picture bearing the title in the *FROZEN* Trademark Logo, it has acquired distinctiveness as an exclusive indicator of origin for the animated motion picture *FROZEN* and associated licensed merchandise.

32. The *FROZEN* Blue Oval is distinctive and, by virtue of the substantial investment and widespread promotion and distribution of the animated motion picture bearing the title in the *FROZEN* Trademark Logo as well as licensed merchandise bearing the *FROZEN* Blue Oval, it has acquired distinctiveness as an exclusive indicator of origin for the animated motion picture *FROZEN* and associated licensed merchandise.

33. Defendants' selection, incorporation, and use of the *FROZEN* trademark, the *FROZEN* Trademark Logo, and the *FROZEN* Blue Oval, and/or copies, variations, simulations, or colorable imitations thereof, were made with full knowledge of the prior and extensive use of DEI's *FROZEN* trademark, the *FROZEN* Trademark Logo, and the *FROZEN* Blue Oval, and were done with a conscious intent to expressly mislead and confuse the consuming public.

34. Defendants' acts alleged herein were willful and deliberate and have harmed DEI in an amount to be determined at trial and such damage will increase unless Defendants are enjoined from their wrongful actions.

35. Defendants' infringing use of the *FROZEN* trademark, the *FROZEN* Trademark Logo, and the *FROZEN* Blue Oval is causing immediate and irreparable injury to DEI and to its goodwill and reputation and will continue to damage DEI and confuse the public unless enjoined by this Court. DEI has no adequate alternative remedy at law to an injunction.

## SECOND CAUSE OF ACTION

### UNFAIR COMPETITION

#### (Lanham Act § 1125(a)(1)(A))

36. DEI incorporates paragraphs 1-35 set forth above as if set forth in full herein.

37. Defendants' marketing, advertising, promoting, distributing, and selling of Defendants' *FROZEN LAND* in commerce using copies, variations, simulations, or colorable imitations of the *FROZEN* trademark, *FROZEN* Trademark Logo, and the *FROZEN* Blue Oval is without authority of license from DEI. The conscious use of copies, variations, simulations, or colorable imitations of the *FROZEN* trademark, *FROZEN* Trademark Logo, and the *FROZEN* Blue Oval, combined with the express or implied representation that the film originated with, is associated with, or is endorsed or approved by DEI, together with a release date intended to capitalize on DEI's substantial marketing investment in *FROZEN* and associated



merchandising, constitute unfair competition in violation of the Lanham Act. 15 U.S.C. § 1125(a)(1)(A).

38. Consumers are likely to be misled and deceived into believing, based on Defendants' representations and conduct in connection with the marketing, advertising, promoting, distributing, and selling of Defendants' *FROZEN LAND* that Defendants' film is associated with, sponsored, or approved by DEI when no such association, sponsorship, or approval exists.

39. DEI is informed and believes, and based on that basis alleges, that Defendants' selection, incorporation and use of the *FROZEN* trademark, *FROZEN* Trademark Logo, and the *FROZEN* Blue Oval, and/or copies, variations, simulations, or colorable imitations thereof, were made with full knowledge of the prior and extensive use of DEI's *FROZEN* trademark, *FROZEN* Trademark Logo, and the *FROZEN* Blue Oval and were done with an intent to deceive the consuming public.

40. Defendants' acts alleged herein were willful and deliberate and have harmed DEI in an amount to be determined at trial, and such damage will increase unless Defendants are enjoined from their wrongful actions.

41. Defendants' infringing use of the *FROZEN* trademark, *FROZEN* Trademark Logo, and the *FROZEN* Blue Oval is causing immediate and irreparable injury to DEI and to its goodwill and reputation and will continue to damage DEI and to confuse the public unless enjoined by this Court. DEI has no adequate alternative remedy at law to an injunction.

### **PRAYER FOR RELIEF**

WHEREFORE, DEI prays for judgment against Defendants as follows:

1. That preliminary and permanent injunctive relief issue restraining Defendants, their officers, agents, servants, employees, representatives, successors and assigns, attorneys, and all those in active concert or participation with them from:



1           a.     Using the *FROZEN* trademark, *FROZEN* Trademark Logo,  
2 and/or the *FROZEN* Blue Oval, or any element thereof that makes Defendants' use  
3 confusingly similar to these, in the marketing, promotion, distribution, and/or sale of  
4 any motion picture in any format, including on DVD, Blu-Ray, and digital  
5 downloads, or of any related goods and/or services; or

6           b.     Infringing the *FROZEN* trademark, *FROZEN* Trademark Logo,  
7 and/or the *FROZEN* Blue Oval, unfairly competing with DEI, or otherwise injuring  
8 DEI's business reputation in any manner;

9           2.     That Defendants shall destroy all DVDs, DVD covers, posters,  
10 publications, software, brochures, labels, signs, or other promotional material that  
11 use the *FROZEN* trademark, *FROZEN* Trademark Logo, and/or the *FROZEN* Blue  
12 Oval, specifically including the distinctive title treatment and logo;

13           3.     That Defendants shall pay DEI compensatory damages and lost profits  
14 in an amount according to proof;

15           4.     That Defendants shall pay DEI actual damages as calculated pursuant  
16 to 15 U.S.C. § 1117(a);

17           5.     That DEI be awarded its reasonable attorneys' fees pursuant to  
18 15 U.S.C. § 1117(a);

19           6.     That DEI be awarded its costs in bringing this action;

20           7.     That DEI be awarded all such other and further relief as the Court  
21 deems just and proper.

22  
23       Dated: December 20, 2013

IRELL & MANELLA LLP

24  
25       By: 

26       Steven A. Marenberg  
27       Attorneys for Plaintiff  
28       DISNEY ENTERPRISES, INC.

**DEMAND FOR TRIAL BY JURY**

DEI hereby demands a trial by jury on all causes of action and issues properly triable to a jury.

Dated: December 20, 2013

IRELL & MANELLA LLP

By. 

Steven A. Marenberg  
Attorneys for Plaintiff

DISNEY ENTERPRISES, INC.